

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Derrick Anthony Criswell, Jr., # 337479,)	
)	C/A No. 2:11-0526-MBS
Plaintiff,)	
)	
vs.)	ORDER
)	
Lt. Darrell Patrick; Ofc. (FNU) Willis;)	
and LeVern Cohen,)	
)	
Defendants.)	
)	

At the time of the underlying complaint, Plaintiff Derrick Anthony Criswell, Jr. was an inmate in custody of the South Carolina Department of Corrections (SCDC). Plaintiff, proceeding pro se, brings this action pursuant to 42 U.S.C. § 1983, alleging that his constitutional rights were violated in certain respects.

This matter is before the court pursuant to motion for voluntarily dismissal filed by Plaintiff on July 19, 2011 (ECF No. 32). Plaintiff also seeks return of his \$350.00 filing fee. Defendants filed a response on July 25, 2011 in which they stated that they had no objection to dismiss of the case, but requested the court to dismiss the case with prejudice. In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Bruce H. Hendricks for pretrial handling. On July 26, 2011, the Magistrate Judge filed a Report and Recommendation in which she recommended that Plaintiff's motion to dismiss be granted without prejudice pursuant to Fed. R. Civ. P. 41(a)(2). The Magistrate Judge further noted that Plaintiff's obligation to pay the filing fee was incurred at the time the action was filed, and therefore the return of the \$350.00 filing fee should be denied. No party filed objections to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court may accept, reject, or modify, in whole or in part, the Report and Recommendation or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

The court has thoroughly reviewed the record. The court adopts the Report and Recommendation and incorporates it herein by reference. The action is dismissed *without prejudice* pursuant to Rule 41(a)(2). Plaintiff’s request for the return of his filing fee is **denied**.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina

August 18, 2011.